

AMENDED IN SENATE AUGUST 18, 2011

**SENATE BILL**

**No. 391**

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**Introduced by Senator Gaines**

*(Principal coauthors: Assembly Members Bonilla, Huber, and Nielsen)*

*(Coauthors: Senators La Malfa and Wyland)*

*(Coauthors: Assembly Members Beth Gaines and Logue)*

February 15, 2011

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~~An act to amend Section 4000 of the Vehicle Code, relating to vehicles.~~ *An act to amend Section 3041 of, and to add Section 3041.8 to, the Penal Code, relating to parole, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Gaines. ~~Vehicles: registration.~~ *Inmates: parole hearings.*

*Existing law generally provides for the release of inmates from prison on parole. Existing law requires, in the case of any inmate sentenced pursuant to any provision of law other than specified provisions of law providing for determinate sentences, that a panel of 2 or more commissioners or deputy commissioners of the Board of Parole Hearings meet with an inmate one year prior to the inmate's minimum eligible parole release date to set a parole release date. Existing law requires the panel, or the board if sitting en banc, to set a release date at the meeting unless it determines that the gravity of the current convicted offense or offenses, or that the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration, and that a parole date cannot be fixed at the meeting.*

*This bill would instead require the panel or board to deny parole for this class of inmate unless the inmate proves that the gravity of the current convicted offense or offenses, or that the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety does not require a more lengthy period of incarceration, and that a parole date can be fixed at the meeting. The bill would also make a related technical, nonsubstantive change.*

*The bill would authorize the board to base its decision to deny parole solely upon the circumstances of the current convicted offense or offenses or the inmate's past criminal history, and would require the board to give greater weight and consideration to those factors than those of institutional behavior or psychiatric evaluations in determining whether the inmate has proven that he or she does not pose an unreasonable risk of danger to society if released from prison. The bill would provide that the facts of the commitment offense or offenses alone may support the ultimate conclusion that the inmate has not proven that he or she does not pose an unreasonable risk to public safety if released on parole.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law prohibits a person from driving, moving, or leaving standing upon a highway, or in an offstreet public parking facility, any motor vehicle, trailer, semitrailer, pole or pipe dolly, or logging dolly, unless it is registered and the appropriate fees have been paid under the Vehicle Code or registered under the permanent trailer identification program, with certain exceptions.~~

~~This bill would make technical, nonsubstantive changes in that provision.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares the following:*
- 2     (a) *It is the intent of the Legislature in enacting this bill to*
- 3     *overturn the decision in In re Lawrence (2008) 44 Cal.4th 1181,*
- 4     *which has caused a spike in appellate litigation, wherein courts*
- 5     *have departed from their normal function of conducting deferential*
- 6     *review of a parole decision by the Board of Parole Hearings and*
- 7     *have instead delved into the subjective question of whether an*

1 inmate poses a current risk to public safety. The vast majority of  
2 inmates evaluated for parole pursuant to Section 3041 of the Penal  
3 Code stand convicted of murder. Since the *In re Lawrence* ruling  
4 in 2008, the number of parole grants from 2008 to 2010, inclusive,  
5 is more than all the parole grants from 1980 to 2004, inclusive.  
6 In fact, during the last 32 years, 42 percent of all parole grants  
7 have occurred since 2008.

8 (b) The issue whether to grant parole is best left to the Board  
9 of Parole Hearings as it has full access to an inmate's voluminous  
10 file, and has an opportunity to see and evaluate the inmate as a  
11 public safety risk by holding a hearing where the inmate and any  
12 victims or next of kin are present.

13 (c) It is the intent of the Legislature to establish that the  
14 protection of public safety should be the overarching criterion in  
15 making parole decisions, and to provide that the burden rests with  
16 each inmate to prove that he or she does not pose an unreasonable  
17 risk to public safety.

18 (d) This act is intended to give meaning and weight to the  
19 provisions of Marsy's Law by sparing crime victims and next of  
20 kin the trauma of having dangerous life-imprisoned inmates  
21 released improvidently by courts, and establishing that the public  
22 safety concerns of crime victims and next of kin will be properly  
23 addressed at a hearing that will have finality and not be disturbed  
24 by a court absent a compelling justification.

25 SEC. 2. Section 3041 of the Penal Code is amended to read:

26 3041. (a) In the case of any inmate sentenced pursuant to any  
27 provision of law, other than Chapter 4.5 (commencing with Section  
28 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet  
29 with each inmate during the third year of incarceration for the  
30 purposes of reviewing the inmate's file, making recommendations,  
31 and documenting activities and conduct pertinent to granting or  
32 withholding postconviction credit. One year prior to the inmate's  
33 minimum eligible parole release date a panel of two or more  
34 commissioners or deputy commissioners shall again meet with the  
35 inmate and ~~shall normally set a parole release date~~ conduct the  
36 inmate's initial parole hearing as provided in Section 3041.5. No  
37 more than one member of the panel shall be a deputy  
38 commissioner. In the event of a tie vote, the matter shall be referred  
39 for an en banc review of the record that was before the panel that  
40 rendered the tie vote. Upon en banc review, the board shall vote

1 to either grant or deny parole and render a statement of decision.  
2 The en banc review shall be conducted pursuant to subdivision  
3 (e). The release date shall be set in a manner that will provide  
4 uniform terms for offenses of similar gravity and magnitude with  
5 respect to their threat to the public, and that will comply with the  
6 sentencing rules that the Judicial Council may issue and any  
7 sentencing information relevant to the setting of parole release  
8 dates. The board shall establish criteria for the setting of parole  
9 release dates and in doing so shall consider the number of victims  
10 of the crime for which the inmate was sentenced and other factors  
11 in mitigation or aggravation of the crime. At least one  
12 commissioner of the panel shall have been present at the last  
13 preceding meeting, unless it is not feasible to do so or where the  
14 last preceding meeting was the initial meeting. Any person on the  
15 hearing panel may request review of any decision regarding parole  
16 for an en banc hearing by the board. In case of a review, a majority  
17 vote in favor of parole by the board members participating in an  
18 en banc review is required to grant parole to any inmate.

19 (b) The panel or the board, sitting en banc, shall ~~set a release~~  
20 ~~date deny parole unless it determines~~ *the inmate proves* that the  
21 gravity of the current convicted offense or offenses, or the timing  
22 and gravity of current or past convicted offense or offenses, is such  
23 that consideration of the public safety ~~requires~~ *does not require* a  
24 more lengthy period of incarceration for ~~this individual~~ *the inmate*,  
25 and that a parole date, therefore, ~~cannot~~ *can* be fixed at this  
26 meeting. After the effective date of this subdivision, any decision  
27 of the parole panel finding an inmate suitable for parole shall  
28 become final within 120 days of the date of the hearing. During  
29 that period, the board may review the panel's decision. The panel's  
30 decision shall become final pursuant to this subdivision unless the  
31 board finds that the panel made an error of law, or that the panel's  
32 decision was based on an error of fact, or that new information  
33 should be presented to the board, any of which when corrected or  
34 considered by the board has a substantial likelihood of resulting  
35 in a substantially different decision upon a rehearing. In making  
36 this determination, the board shall consult with the commissioners  
37 who conducted the parole consideration hearing. No decision of  
38 the parole panel shall be disapproved and referred for rehearing  
39 except by a majority vote of the board, sitting en banc, following  
40 a public meeting.

1 (c) For the purpose of reviewing the suitability for parole of  
2 those inmates eligible for parole under prior law at a date earlier  
3 than that calculated under Section 1170.2, the board shall appoint  
4 panels of at least two persons to meet annually with each inmate  
5 until the time the person is released pursuant to proceedings or  
6 reaches the expiration of his or her term as calculated under Section  
7 1170.2.

8 (d) It is the intent of the Legislature that, during times when  
9 there is no backlog of inmates awaiting parole hearings, life parole  
10 consideration hearings, or life rescission hearings, hearings will  
11 be conducted by a panel of three or more members, the majority  
12 of whom shall be commissioners. The board shall report monthly  
13 on the number of cases where an inmate has not received a  
14 completed initial or subsequent parole consideration hearing within  
15 30 days of the hearing date required by subdivision (a) of Section  
16 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless  
17 the inmate has waived the right to those timeframes. That report  
18 shall be considered the backlog of cases for purposes of this  
19 section, and shall include information on the progress toward  
20 eliminating the backlog, and on the number of inmates who have  
21 waived their right to the above timeframes. The report shall be  
22 made public at a regularly scheduled meeting of the board and a  
23 written report shall be made available to the public and transmitted  
24 to the Legislature quarterly.

25 (e) For purposes of this section, an en banc review by the board  
26 means a review conducted by a majority of commissioners holding  
27 office on the date the matter is heard by the board. An en banc  
28 review shall be conducted in compliance with the following:

29 (1) The commissioners conducting the review shall consider  
30 the entire record of the hearing that resulted in the tie vote.

31 (2) The review shall be limited to the record of the hearing. The  
32 record shall consist of the transcript or audiotape of the hearing,  
33 written or electronically recorded statements actually considered  
34 by the panel that produced the tie vote, and any other material  
35 actually considered by the panel. New evidence or comments shall  
36 not be considered in the en banc proceeding.

37 (3) The board shall separately state reasons for its decision to  
38 grant or deny parole.

39 (4) A commissioner who was involved in the tie vote shall be  
40 recused from consideration of the matter in the en banc review.

SEC. 3. Section 3041.8 is added to the Penal Code, to read:

3041.8. Notwithstanding any other provision of law, the panel or board may base its decision to deny parole in cases involving inmates specified in Section 3041 solely upon the circumstances of the current convicted offense or offenses, the inmate's past criminal history, including involvement in other criminal misconduct that is reliably documented, and shall give greater weight and consideration to these factors than those of institutional behavior or psychiatric evaluations in determining whether the inmate has proven that he or she does not pose an unreasonable risk of danger to society if released from prison. The facts of the commitment offense or offenses alone may support the ultimate conclusion that the inmate has not proven that he or she does not pose an unreasonable risk to public safety if released on parole.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public from offenders who are released on parole due to less than adequate review of their probability of reoffending once released into the community, it is necessary for this act to take effect immediately.

SECTION 1. Section 4000 of the Vehicle Code is amended to read:

~~4000. (a) (1) No person shall drive, move, or leave standing upon a highway, or in an offstreet public parking facility, a motor vehicle, trailer, semitrailer, pole or pipe dolly, or logging dolly, unless it is registered and the appropriate fees have been paid under this code or registered under the permanent trailer identification program, except that an off-highway motor vehicle that displays an identification plate or device issued by the department pursuant to Section 38010 may be driven, moved, or left standing in an offstreet public parking facility without being registered or paying registration fees.~~

~~(2) For purposes of this subdivision, "offstreet public parking facility" means either of the following:~~

~~(A) A publicly owned parking facility.~~

~~(B) A privately owned parking facility for which no fee for the privilege to park is charged and that is held open for the common public use of retail customers.~~

1     ~~(3) This subdivision does not apply to a motor vehicle stored~~  
2     ~~in a privately owned offstreet parking facility by, or with the~~  
3     ~~express permission of, the owner of the privately owned offstreet~~  
4     ~~parking facility.~~

5     ~~(b) No person shall drive, move, or leave standing upon a~~  
6     ~~highway a motor vehicle, as defined in Chapter 2 (commencing~~  
7     ~~with Section 39010) of Part 1 of Division 26 of the Health and~~  
8     ~~Safety Code, which has been registered in violation of Part 5~~  
9     ~~(commencing with Section 43000) of that Division 26.~~

10    ~~(c) Subdivisions (a) and (b) do not apply to off-highway motor~~  
11    ~~vehicles operated pursuant to Sections 38025 and 38026.5.~~

12    ~~(d) This section does not apply, following payment of fees due~~  
13    ~~for registration, during the time that registration and transfer is~~  
14    ~~being withheld by the department pending the investigation of any~~  
15    ~~use tax due under the Revenue and Taxation Code.~~

16    ~~(e) Subdivision (a) does not apply to a vehicle that is towed by~~  
17    ~~a tow truck on the order of a sheriff, marshal, or other official~~  
18    ~~acting pursuant to a court order or on the order of a peace officer~~  
19    ~~acting pursuant to this code.~~

20    ~~(f) Subdivision (a) applies to a vehicle that is towed from a~~  
21    ~~highway or offstreet parking facility under the direction of a~~  
22    ~~highway service organization when that organization is providing~~  
23    ~~emergency roadside assistance to that vehicle. However, the~~  
24    ~~operator of a tow truck providing that assistance to that vehicle is~~  
25    ~~not responsible for the violation of subdivision (a) with respect to~~  
26    ~~that vehicle. The owner of an unregistered vehicle that is disabled~~  
27    ~~and located on private property, shall obtain a permit from the~~  
28    ~~department pursuant to Section 4003 prior to having the vehicle~~  
29    ~~towed on the highway.~~

30    ~~(g) For purposes of this section, possession of a California~~  
31    ~~driver's license by the registered owner of a vehicle shall give rise~~  
32    ~~to a rebuttable presumption that the owner is a resident of~~  
33    ~~California.~~